

THE HONOURABLE SRI JUSTICE M.S. RAMACHANDRA RAO

AND

THE HONOURABLE SRI JUSTICE T. AMARNATH GOUD

Writ Petition No.4873 of 2020

ORDER :

The petitioner herein is a proprietary concern which is a registered dealer under the Central Goods and Services Tax Act, 2017 (**for short, 'the Act'**) on the rolls of the Assistant Commissioner (Sales Tax), Proddatur, Circle-I, Andhra Pradesh, and doing business of trading of Iron and Steel.

2. During the course of its business it placed an order on M/s. Jeevaka Industries Private Limited (Steel Plant Division), Chegunta Village and Mandal, Medak District, Telangana State for supply of M.S. Angles of different sizes.

3. The vendor raised a telephonic invoice / delivery challan dt.26.01.2020 on the petitioner in which he charged IGST at the rate of 18%. The vendor also issued a *e-Way* Bill generated from the G.S.T. Website bearing *e-Way* Bill No.1411 9672 7806 dt.26.01.2020.

4. Thereafter, the vendor entrusted the goods to a transporter owning vehicle No.TS-12-UB-6140 for transporting the goods from the vendor's factory at Chegunta Village and Mandal, Medak District, Telangana State to the petitioner's premises at Proddatur, Andhra Pradesh.

5. Petitioner contends that goods were loaded on the said vehicle on 26.01.2020 during the afternoon hours, and as heavy vehicles were not allowed on the city roads of Hyderabad (through which the vehicle has to pass through) during day-light hours, the lorry started for its destination on 27.01.2020 duly accompanied by the Tax Invoice and e-Way Bills, etc.

6. According to petitioner, after entrusting the goods to the transporter, but before petitioner received the goods, the petitioner got an order for supply of the said goods from M/s.Laxmi Narasimha Constructions, Proddatur, and that he accordingly sold the same to the said buyer by raising tax invoice No.SIT – 537 dt.27.01.2020 on the buyer and also generating e-Way Bill No.171196790568 dt.27.01.2020 for transportation of the said goods from the petitioner's business premises at Proddatur to the customer's premises also at Proddatur.

7. According to petitioner, the buyer requested the petitioner to deliver the goods directly to their shop work site, i.e., M/s. JVS Switchgear LLP at Katedan/Mailardevpally, Rajendranagar, Ranga Reddy District in the State of Telangana for converting into Electric Tower parts.

8. The petitioner alleges that in order to save transport expenditure and time in getting the goods transported to (i) the petitioner's premises at Proddatur, Andhra Pradesh and (ii) later on to the buyer's

premises also at Proddatur, Andhra Pradesh, and (iii) again transporting them to the Job work site in Telangana State, at the request of M/s.Laxmi Narasimha Constructions, Proddatur, the petitioner telephonically instructed the driver of vehicle to take the goods to M/s JVS Switchgear LLP at Katedan/ Mailardevpally, Rajendranagar, Telangana State, stating that tax invoice SIT-537 and e-Way Bill 1711 9679 0568 generated by petitioner on the customer were also being sent.

9. According to petitioner, the vehicle then proceeded to Katedan/Mailardevpally, Rajendranagar, Ranga Reddy District and was waiting at a little distance from the Job work site of the buyer of petitioner for the documents to arrive from petitioner.

10. At that stage, the 1st respondent inspected the vehicle and the goods it was carrying along with the documents on 27.01.2020 at 0750hrs.

11. According to petitioner, even though the driver of the vehicle produced all documents such as Tax Invoice and e-Way Bill, on the ground that the said documents are for transporting the goods to Proddatur, Andhra Pradesh but the vehicle was proceeding to deliver the goods at Katedan, the 1st respondent detained the same by issuing an order of detention in Form GST-MOV06 dt.27.1.2020 by mentioning the ground '*wrong destination is noticed*', and directed the

driver of the vehicle to station the vehicle at Police Station, Mailardevpally.

12. Thereafter, the 1st respondent issued notice dt.27.1.2020 to petitioner asking the petitioner to show-cause within seven (7) days why tax under the Act along with penalty equal to tax to the tune of Rs.4,30,778/- should not be recovered from petitioner.

13. On 28.01.2020, the petitioner gave an explanation to the 1st respondent informing the events which occurred and also stating that for the purpose of saving transportation costs and time to its customer/buyer, viz., M/s.Laxmi Narasimha Constructions, Proddatur, the goods and the vehicle were directed to the Job work site of the purchaser by name, M/s. JVS Switchgear LLP at Katedan, and also enclosed copy of necessary documents.

14. No order was passed by the 1st respondent after considering petitioner's reply dt.28.01.2020 to the show-cause notice issued to petitioner.

15. Since the transporter was pressurizing the petitioner to get his vehicle released, the petitioner paid on 30.1.2020 *under protest* total tax and penalty amounting to Rs.4,30,778/- demanded by the 1st respondent, and the petitioner also gave a letter on 30.01.2020 stating so.

16. The detained goods and the vehicle were then released after payment of tax and penalty on 30.01.2020 at 02:00 p.m.

Petitioner's contentions

17. The petitioner contends that there was no intention or attempt on his part to evade tax, and to save unnecessary transport charges and also time which would have been incurred by first transporting goods from (i) the site of the vendor of petitioner in Telangana to petitioner's business place in Andhra Pradesh, and (ii) then again from petitioner's place in Andhra Pradesh to its customer's / buyer's place in Andhra Pradesh, and (iii) thereafter, again to the job work site of petitioner's customer located in Telangana State, it had asked the driver of the vehicle to deliver goods directly to the petitioner's customer's Job work site office at Katedan, Telangana State by raising appropriate tax invoice and also generating *e-Way Bill*. According to petitioner, by this action, no tax benefit accrued to petitioner and there is no loss of revenue to the State of Telangana either.

18. Reliance is also placed on a Circular issued by the Central Board of Indirect Taxes and Customs vide CBEC / 20 / 16 / 03 / 2017 and GST dt.14.09.2018 and it is pointed out that by virtue of the said Circular, which is binding on the respondents, if a consignment of goods is accompanied with an Invoice or an *e-Way Bill*, proceedings under Section 129 of the Act ought not to be initiated.

19. According to petitioner, for minor technical defects, the said Circular provides for a penalty of Rs.500/- each under Section 125 of the Act, and the respective State GST Act, 2017; that at best, a sum of Rs.1,000/- towards nominal penalty could have been imposed by the

1st respondent, but the 1st respondent had collected Rs.4,30,778/- coercively from petitioner for releasing the goods and conveyance in disobedience of the instructions contained in the said Circular which are binding on him.

20. Reliance is also placed on the decision of the Madras High Court in **R.K. Motors vs. State Tax Officer**, and that of the Gujarat High Court in **Synergy Fertichem Private Limited vs. State of Gujarat**¹ and the Full Bench judgment of the Andhra Pradesh High Court in **Ambica Lamp House vs. C.T.O. (I & T-1) Enforcement, State of Andhra Pradesh**².

21. It was also pointed out that no order was passed against the petitioner by the 1st respondent which could have been challenged by the petitioner by filing any statutory appeal, petitioner cannot avail the appellate remedy and since the impugned action of the 1st respondent was without jurisdiction, the present Writ Petition is maintainable.

22. The petitioner therefore sought refund of the amount of Rs.4,30,778/- collected from petitioner towards tax and penalty on 30.01.2020.

Counter Affidavit filed by the 1st respondent

23. Counter-affidavit was filed by the 1st respondent opposing grant of relief to petitioner.

¹ 2020 (33) G.S.T.L. 513 = [2020] 76 GSTR 81 (Guj)

² (2004) 40 APSTJ 56 [AP] (F.B.)

24. It is contended that detention order dt.27.01.2020 and subsequent orders dt.04.02.2020 collecting tax and penalty are appealable orders under Section 107 of the S.G.S.T. Act, 2017, and the petitioner did not file any such appeal, and so, the present Writ Petition ought not to be entertained.

25. *But, along with the counter-affidavit, no order allegedly passed on 04.02.2020 against the petitioner is enclosed.*

26. It is next contended that at the time of inspection of the vehicle on 27.01.2020, the driver of the vehicle produced invoice as well as e-Way Bill with regard to the consignment of goods being carried by him, and they showed that goods were being transported from M/s. Jeevaka Industries Private Limited, Chegunta Mandal, Medak District, Telangana to the petitioner at its address in Proddatur, Andhra Pradesh.

27. According to the 1st respondent, the goods vehicle was found at Katedan, Hyderabad and this gave room for suspicion about the *bona fides* of the transaction; and when the driver of the vehicle was questioned why the vehicle was stationed at that place he allegedly informed that the goods vehicle was stopped as it was waiting for unloading the above goods at M/s. JVS Switchgear LLP at Katedan, Hyderabad. He also alleged that the statement of the driver was recorded in Telugu language on 27.01.2020, and that it was also read

over to the driver in Hindi language and he signed the statement in Hindi with his own handwriting.

28. It was also alleged that subsequently, the statement of the driver was also endorsed by the authorized person of M/s. JVS Switchgear LLP at Katedan, Hyderabad, viz., Mr. Raghu Prakash.

29. It was also alleged that the detention order dt.27.01.2020 in Form GST MOV – 06 was served on the driver of the vehicle in exercise of the power under Section 129(1) of the SGST Act / CGST Act read with Sub-Section (3) of Section 68 of the State Act and Rule 138-B thereof.

30. It was also contended that pursuant to the demand notice issued for payment of tax and penalty, the petitioner had paid the sum on 30.01.2020 and the vehicle was thereafter released.

31. Though reference to the explanation dt.28.01.2020 of the petitioner filed through the driver to the show-cause notice issued by the 1st respondent on 27.01.2020 is referred to in the counter affidavit, no explanation is offered why no order was passed thereon.

32. It was contended that the objections of petitioner were examined and found to be untenable for the reason that *intention of petitioner* was to unload the goods at Katedan, Hyderabad, and in such an event, petitioner always had an option available in the e-Way Bill to disclose the place of unloading, but it did not happen in the instant case.

33. It was also contended that as per Rule 46(o) of the S.G.S.T. Rules, the supplier, while issuing invoice in respect of supply of goods could indicate in the invoice the address of delivery where the same is different from the place of supply.

34. The 1st respondent contends that the address mentioned in the invoice is at Proddatur in Andhra Pradesh, but not the address at Katedan.

35. According to the 1st respondent, except the initial invoice and *e*-Way Bill issued by M/s. Jeevaka Industries Private Limited, Chegunta Village and Mandal Medak District, Telangana the other *e*-Way Bill and Tax Invoice dt.27.1.2020 was generated subsequent to the detention of the vehicle; these documents are self-serving as the same were not produced when the vehicle was detained.

36. It was also alleged that 1st respondent followed the CGST and SGST Act and the Rules, and the 1st respondent was justified in detaining the vehicle and the goods, and there was no violation of due process of law.

37. It is contended that the goods vehicle was found at destination not being the one mentioned in the invoice and also the *e*-Way Bill of the supplier, and so, action was rightly taken under Section 129 of the CGST Act for collecting tax and penalty.

38. It was also alleged that petitioner did not contend at the time of issuance of notice in FORM MOV - 06 and while filing objections to

the notice about the collection of tax and penalty forcibly, but such a contention is raised for the first time in this Court as an after-thought.

39. It was contended that telephonic instructions of petitioner to the driver of goods vehicle to deliver the goods at the place of the shop work's site in Katedan, Hyderabad cannot be accepted for want of evidence, and that it is a self-serving one only to cover up the laches.

40. It was also alleged that if the petitioner in fact received order from his buyer while goods are in transit and the goods were to be delivered at the shop work site in Katedan, Hyderabad, Telangana nothing prevented the petitioner to mention the name and address of the Job work place at Katedan of M/s. JVS Switchgear LLP at Mailardevpally, Rajendranagar, Ranga Reddy District, as consignee in the invoice issued by him, and the petitioner cannot canvass the case of purchaser from it regarding saving of transport cost for the purchaser.

The consideration by this Court :

41. The counsel for petitioner, and the learned Government Pleader for Commercial Taxes, reiterated their respective contentions.

42. S.107 provides an appellate remedy only against a decision/order of an adjudicatory authority.

43. It is not the case of the 1st respondent that he had passed any reasoned order and communicated to the petitioner after considering

petitioner's explanation dt.28.1.2020 to the show-cause notice dt.27.1.2020 issued by him.

44. Without there being any order/decision passed by the 1st respondent and communicated to the petitioner, the petitioner cannot be expected to file appeal invoking Section 107 of the TGST Act, 2017.

45. Though, reference to a subsequent order dt.04.02.2020 is made by the 1st respondent in para no.4 of the counter-affidavit filed by him, such an order is not filed by the 1st respondent along with his counter affidavit, and there is no evidence to show that if such an order has been passed by him, it is served on the petitioner.

46. So we reject the plea of the 1st respondent that the petitioner should avail the remedy of appeal under Sec.107 of the TGST Act.

47. Section 129 of the CGST Act/ Telangana GST Act,2017 states as under :

“129. Detention, seizure and release of goods and conveyances in transit :

*(1) Notwithstanding anything contained in this Act, where Seizure and any person transports any goods or stores any goods while they release of goods are in transit **in contravention of the provisions of this Act or the and rules made thereunder**, all such goods and conveyance used as a conveyances in means of transport for carrying the said goods and documents relating to such goods and conveyances shall be liable to detention or seizure and after detention or seizure, shall be released,*

—(a) on payment of the applicable tax and penalty equal to one hundred per cent. of the tax payable on such goods and, in case of

exempted goods, on payment of an amount equal to two per cent of the value of goods or twenty five thousand rupees, whichever is less, where the owner of the goods comes forward for payment of such tax and penalty;

(b) on payment of the applicable tax and penalty equal to the fifty per cent. of the value of the goods reduced by the tax amount paid thereon and, in case of exempted goods, on payment of an amount equal to five per cent of the value of goods or twenty five thousand rupees, whichever is less, where the owner of the goods does not come forward for payment of such tax and penalty;

(c) upon furnishing a security equivalent to the amount payable under clause (a) or clause (b) in such form and manner as may be prescribed:

Provided that no such goods or conveyance shall be detained or seized without serving an order of detention or seizure on the person transporting the goods.

(2) The provisions of sub-section (6) of section 67 shall, mutatis mutandis, apply for detention and seizure of goods and conveyances.

(3) The proper officer detaining or seizing goods or conveyances shall issue a notice specifying the tax and penalty payable and thereafter, pass an order for payment of tax and penalty under clause (a) or clause (b) or clause (c).

(4) No tax, interest or penalty shall be determined under sub-section (2) without giving the person concerned an opportunity of being heard.

(5) On payment of amount referred in sub-section (1), all proceedings in respect of the notice specified in sub-section (2) shall be deemed to be concluded.

(6) Where the person transporting any goods or the owner of the goods fails to pay the amount of tax and penalty as provided in sub-section (1) within seven days of such detention or seizure, further proceedings shall be initiated in terms of section 130:

Provided that where the detained or seized goods are perishable or hazardous in nature or are likely to depreciate in value with passage of time, the said period of seven days may be reduced by the proper officer.”

48. Therefore, under the above provision there is power conferred on the respondents to detain goods while in transit *if there is contravention of the provisions of the Act or the Rules made thereunder.*

49. Section 68 of the CGST Act, 2017 / TGST, 2017 provides that the Government may require the person in-charge of a conveyance carrying any consignment of goods of value exceeding a prescribed limit to carry certain documents and devices.

50. Rule 138-A of the Rules framed under the CGST Act mandates that a person in-charge of conveyance should carry invoice or bill of supply or delivery challan, and a copy of the *e-Way Bill* in physical form.

51. Rule 138 – B permits the Commissioner or an Officer empowered by him to intercept any conveyance to verify the *e-Way Bill* in physical or electronic form for all inter-State and intra-State movement of goods, and Rule 138-C provides for inspection and verification of goods.

52. In **Synergy Fertichem Pvt. Ltd. vs. State of Gujarat** (1 supra), the Gujarat High Court held as follows :

“94. The Central Board of Indirect Taxes and Customs, New Delhi, has issued a Circular in F. No. CBEC/20/16/03/2017-GST, dated 14.09.2018, in regard to the procedure to be followed in the Interception of conveyances for inspection of goods in movement and detention, release and confiscation of such goods and conveyances’.

95. Our attention is drawn to paragraphs 3, 4, 5 and 6 of the said Circular, extracted below:-

"... 3. Section 68 of the CGST Act read with rule 138A of the Central Goods and Services Tax Rules, 2017 (hereinafter referred to as 'the CGST Rules') requires that the person in charge of a conveyance carrying any consignment of goods of value exceeding Rs. 50,000/- should carry a copy of documents viz., invoice/bill of supply/delivery challan/bill of entry and a valid e-way bill in physical or electronic form for verification. In case such person does not carry the mentioned documents, there is no doubt that a contravention of the provisions of the law takes place and the provisions of section 129 and section 130 of the CGST Act are invocable. Further, it may be noted that the non-furnishing of information in Part B of FORM GSTEWB-01 amounts to the e-way bill becoming not a valid document for the movement of goods by road as per Explanation (2) to rule 138(3) of the CGST Rules, except in the case where the goods are transported for a distance of upto fifty kilometres within the State or Union territory to or from the place of business of the transporter to the place of business of the consignor or the consignee, as the case may be.

4. Whereas, section 129 of the CGST Act provides for detention and seizure of goods and conveyances and their release on the payment of requisite tax and penalty in cases where such goods are transported in contravention of the provisions of the CGST Act or the rules made thereunder. It has been informed that proceedings under section 129 of the CGST Act are being initiated for every mistake in the documents mentioned in para 3 above. It is clarified that in case a consignment of goods is accompanied by an invoice or any other specified document and not an e-way bill, proceedings under section 129 of the CGST Act may be initiated.

5. Further, in case a consignment of goods is accompanied with an invoice or any other specified document and also an e-way bill, proceedings under section 129 of the CGST Act may not be initiated, inter alia, in the following situations:

a) Spelling mistakes in the name of the consignor or the consignee but the GSTIN, wherever applicable, is correct;

b) Error in the pin-code but the address of the consignor and the consignee mentioned is correct, subject to the condition that the error in the PIN code should not have the effect of increasing the validity period of the e-way bill;

c) Error in the address of the consignee to the extent that the locality and other details of the consignee are correct;

d) Error in one or two digits of the document number mentioned in the e-way bill;

e) Error in 4 or 6 digit level of HSN where the first 2 digits of HSN are correct and the rate of tax mentioned is correct;

f) Error in one or two digits/characters of the vehicle number.

6. In case of the above situations, penalty to the tune of Rs. 500/- each under section 125 of the CGST Act and the respective State GST Act should be imposed (Rs. 1000/- under the IGST Act) in FORM GST DRC-07 for every consignment. A record of all such consignments where proceedings under section 129 of the CGST Act have not been invoked in view of the situations listed in paragraph 5 above shall be sent by the proper officer to his controlling officer on a weekly basis.....'the questions to be determined in these cases relate to the release of consignment and the quantum of penalty, if any, to be levied at this stage, and pending adjudication."

53. Interpreting the above provisions, the Gujarat High Court observed as under :

"96. As far as the determination of penalty is concerned, it is the Assessing Officer/State Tax Officer who is the competent and proper person for such determination/quantification. However, a holistic reading of the statutory provisions and the Circular noted above, indicates to me that the Department does not paint all violations/transgressions with the same brush and makes a distinction between serious and substantive violations and those that are minor/procedural in nature."

“101. We are of the view that at the time of detention and seizure of goods or conveyance, the first thing the authorities need to look into closely is the nature of the contravention of the provisions of the Act or the Rules. The second step in the process for the authorities to examine closely is whether such contravention of the provisions of the Act or the Rules was with an intent to evade the payment of tax. Section 135 of the Act provides for presumption of culpable mental state but such presumption is available to the department only in the cases of prosecution and not for the purpose of Section 130 of the Act. What we are trying to convey is that in a given case, the contravention may be quite trivial or may not be of such a magnitude which by itself would be sufficient to take the view that the contravention was with the necessary intent to evade payment of tax.

102. In such circumstances, referred to above, we propose to take the view that in all cases, without any application of mind and without any justifiable grounds or reasons to believe, the authorities may not be justified to straightway issue a notice of confiscation under Section 130 of the Act. For the purpose of issuing a notice of confiscation under Section 130 of the Act at the threshold, i.e., at the stage of Section 129 of the Act itself, the case has to be of such a nature that on the face of the entire transaction, the authority concerned is convinced that the contravention was with a definite intent to evade payment of tax. We may give one simple example. The driver of the vehicle is in a position to produce all the relevant documents to the satisfaction of the authority concerned as regards payment of tax etc., but unfortunately, he is not able to produce the e-way bill, which is also one of the important documents so far as the Act, 2017 is concerned. The authenticity of the delivery challan is also not doubted. In such a situation, it would be too much for the authorities to straightway jump to the conclusion that the case is one of confiscation, i.e., the case is of intent to evade payment of tax.”
(emphasis supplied)

54. We are in complete agreement with the *ratio* laid down by the Gujarat High Court and hold that:

(i) that at the time of detention and seizure of goods or conveyance, the **first thing** the authorities need to look into closely is the nature of the contravention of the provisions of the Act or the Rule;

(ii) the **second step** in the process for the authorities to examine closely is whether such contravention of the provisions of the Act or the Rules was with an intent to evade the payment of tax;

(iii) a **holistic reading of the statutory provisions and the Circular noted above, indicates that the Department does not paint all violations/transgressions with the same brush and makes a distinction between serious and substantive violations and those that are minor/procedural in nature;** and in a given case, the contravention may be quite trivial or may not be of such a magnitude which by itself would be sufficient to take the view that the contravention was not with the necessary intent to evade payment of tax.

We respectfully follow the same.

55. Therefore, we shall consider firstly the nature of the contravention of the provisions of the Act or the Rules allegedly made by the petitioner.

56. We may note that in the Show cause notice dt.27.1.2020 issued to the petitioner, the only reason assigned by the 1st respondent was that '*wrong destination is noticed*'.

57. In the statement allegedly recorded on 27.1.2020 at 7.50 am from the driver of the vehicle transporting the goods (filed as Ex.P-3), it is recorded that he is transporting the goods from Chegunta in Medak to Katedan, Hyderabad.

58. 'Noticing the conveyance at a wrong destination' without anything more cannot be said to be a contravention of the CGST Act/Telangana GST Act,2017 and it is not an taxable event, for there could be several reasons for the same including the driver losing his way or stopping for repair or to answer a call of nature.

59. Admittedly the vehicle at the time of its detention on 27.01.2020 at Katedhan at 07:50 a.m. by the 1st respondent was accompanied by tax invoice dt.26.1.2020 and e-Way Bill dt.26.01.2020 issued by M/s. Jeevaka Industries Private Limited, Chegunta Village and Mandal, Medak District, Telangana and IGST at the rate of 18% had already been charged thereon.

60. Once the conveyance/vehicle driver had the tax invoice and the e-way bill, there is prima facie compliance with the provisions of the CGST Act and Telanaga GST Act and the rules made thereunder and as per para 5 of the circular dt.14.9.2018 referred to above, it did not

warrant initiating of proceedings under Sdc.129 of the Telangana GST Act,2017.

61. It is the case of the petitioner that the goods had been sold *during transit* by petitioner to M/s.Laxmi Narasimha Constructions, Proddatur, Andhra Pradesh, and in respect of this transaction, Ex.P9 – an e-Way Bill No. 1711 9679 0568 dt.27.01.2020 and Tax Invoice SIT-537 had been generated on 27.1.2020 at 09:48 a.m. for sale of the goods showing the billing address of purchaser, viz., M/s.Laxmi Narasimha Constructions, Proddatur, Andhra Pradesh. The purchaser M/s Lakshmi Narasimha Constructions had also issued Ex.P10 delivery challan KLD/2019-20/005 on 27.1.2020 for delivery to M/s JSW Switch Gears LLP, Mallaradevpally, Telangana (at Katedan according to 1st respondent).

62. It is the case of petitioner that the purchaser of M/s.Laxmi Narasimha Constructions, Proddatur had requested the petitioner to deliver the goods at its job work site, i.e, M/s. JVS Switchgear LLP at Mailardevpally, Rajendranagar, Ranga Reddy District in the State of Telangana, for converting the same into electric Tower parts so that transportation charges and time would be saved by such delivery directly by the transporter.

63. According to petitioner, it had telephonically instructed the driver of the vehicle to take the goods to the shop work site of its

purchaser, viz., M/s. JVS Switchgear LLP at Mailardevpally, Rajendranagar, Ranga Reddy District.

64. No doubt, in the *e*-Way Bill, the place of delivery of the goods at the Job work site of the purchaser from the petitioner i.e., M/s. JVS Switchgear LLP at Mailardevpally, Rajendranagar, Ranga Reddy District was not mentioned. But, in the Ex.P10 delivery challan dt.27.1.2020, the same was mentioned.

65. This material, in our opinion, corroborates the petitioner's defence contained in its explanation dt.28.1.2020 to the show cause notice issued by the 1st respondent.

66. According to 1st respondent, the vehicle being found at Katedhan, Hyderabad gave room for suspicion about the *bona fides* of the transaction instigating the 1st respondent to detain the vehicle. It was contended that the objections of petitioner were examined and found to be untenable for the reason that *intention of petitioner* was to unload the goods at Katedan, Hyderabad. According to him, there is a discrepancy of destination in the sense that the goods were being sent to a destination not mentioned in the invoice / *e*-Way Bill dt.26.01.2020. According to the 1st respondent, the *e*-Way Bill dt.27.01.2020 is issued *subsequent* to the detention of the vehicle and has to be therefore treated as a self-serving one and also as one created as an after-thought.

67. We are unable to accept the said contention.

68. It is not as if when goods are in transit there is a prohibition of their sale by the purchaser to a third party. In fact the court can take judicial notice that it is quite a common thing and a well recognized trade practice.

69. It is also important to note that 26.1.2020 i.e., the day when the goods were loaded on the vehicle was a Public Holiday, i.e., Republic Day.

70. If there is any transaction between the petitioner and M/s.Laxmi Narasimha Constructions, Proddatur, Andhra Pradesh on 27.01.2020, the next working day after 26.1.2020, there is no need to suspect the *bona fides* of transaction merely because the Ex.P9 - e-Way Bill was generated at 9.48 am, along with a tax invoice in favour of purchaser, viz., M/s.Laxmi Narasimha Constructions, Proddatur, about two hours after the vehicle's detention at 7.50 am and cannot be construed that petitioner had an *intention* to unload the goods at Katedan, Hyderabad, which is somehow contrary to law.

71. If the intention of the petitioner to unload the goods at Katedan, Hyderabad is pursuant to a request from it's purchaser to deliver at the latter's Job work site in Katedan *and not to evade the tax or contravene any provision of law*, no adverse inference can be drawn against the petitioner.

72. We are of the view that any defect, if any, in the documentation accompanying the goods has to be looked at in terms of the Circular

dt.14.09.2018 issued by the Central Board of Indirect Taxes and Customs, New Delhi.

73. It may be that when the Ex.P9 - *e*-Way Bill dt.27.1.2020 was prepared by the petitioner there was an option to disclose the place of unloading such as the job worker's address which was not done in the instant case, as permitted by Rule 46(o) of the S.G.S.T. Rules. A mere omission to mention the said fact in the *e*-Way Bill, cannot be a ground for the 1st respondent to presume that there is an intention to violate the law or to evade tax.

74. So we reject the contention of the 1st respondent that producing the *e*-Way Bill and tax invoice by the petitioner in favour of M/s.Laxmi Narasimha Constructions, Proddatur bearing the date 27.01.2020 is only an after-thought to cover up its laches.

75. One must keep in mind that CGST Act,2017/ Telangana GST Act,2017 are very recent laws and the common businessman is admittedly having difficulty to understand these enactments and the procedures they have introduced. It is important to note that interpretation of taxing statutes should be done in a way to facilitate business and inter-State trading, and not in a perverse manner which would result in impediment of the same by harassing business persons.

76. It is not in dispute that petitioner waited for three days after submitting explanation to the show-cause notice for an order to be

passed by the 1st respondent, and when the 1st respondent failed to do so and also did not release the vehicle and the goods, the petitioner paid the tax and penalty under protest on 30.01.2020 and got released the goods.

77. It is absurd for the 1st respondent to say that while filing objections / reply to the show-cause notice, the petitioner did not mention about collection of tax and penalty forcibly, and that that allegation is made for the first time only before this Court only as an after-thought.

78. At the time when the petitioner filed objections on 27.01.2020 through the driver of the vehicle to the show-cause notice issued by the 1st respondent on 27.01.2020, tax and penalty had not been paid by the petitioner at all. Therefore, there was no occasion for the petitioner to refer to the same in the reply to the show-cause notice.

79. Though the 1st respondent sought to distinguish the judgment of the Gujarat High Court in **Synergy Fertichem** (1 supra) on the ground that no action for confiscation of goods initiated in the instant case like in that case, we do not agree. In our opinion, the Gujarat High Court in **Synergy Fertichem** (1 supra) had not only interpreted Section 130 of the Act which dealt with confiscation of goods but also considered Section 129 of the Act, and the relevant provisions relating to detention of the goods.

80. In this view of the matter, the Writ Petition is allowed and the action of 1st respondent in collecting the sum of Rs.4,30,778/- from petitioner on 30.01.2020 is declared as arbitrary and violative of Articles 14 and 265 of the Constitution of India, and also the provisions of CGST Act, 2017 and TGST Act, 2017, and also the Circular CBEC / 20 / 16 / 03 / 2017 – GST dt.14.09.2018, issued by the Government of India; and consequently, the respondents are directed to refund the said amount with interest at the rate of 6 % per annum from 30.01.2020 till date of payment within 6 weeks. No order as to costs.

81. As a sequel, miscellaneous petitions pending if any in this Writ Petition, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

JUSTICE T. AMARNATH GOUD

Date: 6 .11.2020

Ndr